

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 006943.00310)

In the Application of:)
Lee, et al.)
Serial No.: 10/628,420) Examiner: Chawla, Jyoti
Filing Date: July 29, 2003) Group Art Unit: 1794
For: Method to improve the stability of) Confirmation No. 6264
lemon/lime flavored beverages)

**APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR
RECONSIDERATION UNDER 37 CFR 1.705(b)**

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

1. This is a request for reconsideration of the patent term adjustment of 440 days indicated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) that was identified in the Determination mailed April 3, 2009 for the above-referenced application. It is respectfully requested that Applicants be granted a minimum patent term adjustment of 675 days which includes the term to be added based on the sum of the number of days following the 14 Month Delay and the number of days following the Three Year Delay, minus the number of days of Applicant Delay for the above-referenced application.

2. Applicants submit herewith a "Statement Under 37 CFR 1.705(b)(2)."

An “Application for Patent Term Adjustment Including Request for Reconsideration Under 37 CFR 1.705(b)” was filed June 16, 2009 (hereinafter “the PTA Application of June 16, 2009”). In a communication mailed July 13, 2009, entitled “On Application For Patent Term Adjustment,” the Office of Petitions stated dismissed the PTA Application of June 16, 2009

Application "as PREMATURE." The Office of Petitions stated that "the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed)". The Office of Petitions stated that "the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued." The Office of Petitions acknowledged "submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b)" and stated that "[a]ny request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e)."

Applicants respectfully submit that decision of the Office of Petitions is contrary to the rule set forth in 37 CFR 1.705 (b), which provides:

"...An application for patent term adjustment under this section must be filed no later than the payment of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance."

Applicants believe that the PTA Application of June 16, 2009 was not premature because it was filed "no later than the payment of the issue fee" on July 2, 2009, and was not "filed earlier than the date of mailing of the notice of allowance" on April 3, 2009.

In view of the facts above, Applicants respectfully ask that the Office of Petitions to reconsider its position that the PTA Application of June 16, 2009 was "PREMATURE" or in the alternative, that the present Application need not require a payment under 37 CFR 1.18(e) since this fee was already paid with the PTA Application of June 16, 2009. If, however, the Office of Petitions continues to deem that a fee under 37 CFR 1.18(e) is still required in connection with the present Application, the Commissioner is authorized to charge the fee set forth in 37 CFR 1.18(e) (\$200.00) to our Deposit Account No. 19-0733, and to charge any additional fees or credit any overpayments to our Deposit Account No. 19-0733.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: August 13, 2009

By:


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